

# **EXHIBIT A**

DEC-23-2009 WED 04:59 PM D M &amp; L PC

FAX NO. 4065430134

P. 03/08

1 Terance P. Perry, Esq.  
 2 DATSOPOULOS, MacDONALD & LIND, P.C.  
 3 201 West Main Street, Suite 201  
 4 Missoula, Montana 59802  
 Phone: (406) 728-0810  
 Fax: (406) 543-0134

FILED  
 DEBBIE HARMON, CLERK

DEC 23 2009

Attorneys for Plaintiffs

DEPUTY

## MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

9 JAMES C. MURRAY and ALLISON B.  
 10 MURRAY, husband and wife;

Cause No. DV-09-691  
 Dept. No. 1

Plaintiffs,

vs.

COMPLAINT AND DEMAND FOR  
JURY TRIAL

13 HOWARD C. BRAND, JR.

14 Defendant.

FACTS COMMON TO ALL COUNTS

- 16 1. Plaintiffs, James C. Murray and Allison B. Murray, husband and wife, are residents of the  
 17 State of Montana with a principal place of residence in Ravalli County, Montana.
- 18 2. At all times relevant, Defendant, Howard C. Brand, Jr., was a resident of the State of  
 19 Montana with a principal place of residence in Ravalli County.
- 20 3. On or about March 16, 2009, the Plaintiffs loaned the Defendant Seventy Thousand and  
 21 No/100 Dollars (\$70,000.00) in exchange for which loan said Defendant executed a  
 22 Promissory Note in favor of Plaintiffs pursuant to the terms of which said Defendant agreed  
 23 to pay Eighty-Five Thousand and No/100 Dollars (\$85,000.00) to Plaintiffs within ninety  
 24 (\$90) days, on or before June 14, 2009 (hereinafter "Note"). (see Exhibit "A" attached hereto  
 25 and included by reference).

Complaint and Demand for Jury Trial

1

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- 1 4. Pursuant to the terms of the Note, absent Defendant's repayment on or before June 14, 2009,  
2 interest was to accrue at, "the rate of thirteen percent (13%) per annum, compounded  
3 monthly, or the maximum legal rate, whichever is less." (see Exhibit "A").
- 4 5. Pursuant to the terms of the Note, the Defendant agreed that, "[I]f suit is brought to collect  
5 this note, the payee shall be entitled to collect the expenses of collection and all costs and  
6 expenses of the suit, including reasonable attorney's fees." (see Exhibit "A").
- 7 6. On or about March 16, 2009, Defendant also executed a Security Agreement in favor of  
8 Plaintiffs pursuant to the terms of which said Defendant granted Plaintiffs a security interest  
9 in eight (8) vehicles as collateral, as listed in Exhibit A to the Security Agreement, in order to  
10 secure the Note (hereinafter "Security Agreement"). (see Exhibit "B" attached hereto and  
11 included by reference).
- 12 7. Pursuant to the terms of the Security Agreement, the Defendant agreed that a security interest  
13 is granted to the collateral listed in Exhibit A thereto. (see Exhibit "B").
- 14 8. As of October, 2009, in order to care for the collateral secured by the Security Agreement the  
15 Plaintiffs arranged for storage and have been paying storage costs for five (5) of the vehicles  
16 listed as collateral in the Security Agreement.
- 17 9. Pursuant to Section 5 of the Security Agreement, Plaintiffs may, in their discretion:  
18  
19 before or after default: terminate, require Debtor to give possession or control of the  
20 Collateral to Secured Party; indorse as Debtor's agent any instruments or chattel  
21 paper in the Collateral; take any action Debtor is required to take or otherwise  
22 necessary to obtain, preserve, and enforce this security interest, and maintain and  
23 preserve the Collateral, without notice to Debtor, and add costs of same to the  
24 Obligation (but Secured Party is under no duty to take any such action); release  
25 Collateral in its possession to Debtor, temporarily or otherwise; take control of  
funds generated by the Collateral and use same to reduce any part of the Obligation;  
waive any of its rights hereunder without such waiver prohibiting the later exercise  
of the same or similar rights; revoke any permission or waiver previously granted by  
Debtor.

1 (see Exhibit "B").

2 10. Pursuant to Section 6(b) of the Security Agreement:

3 If an event of default occurs, the entire Obligation shall become immediately due  
4 and payable at Secured Party's option without notice to Debtor, and Secured Party  
5 may proceed to enforce payment of same and exercise any and all of the rights and  
6 remedies available to a secured party under the Uniform Commercial Code as well  
7 as all other rights and remedies. If Debtor is in default, Debtor, upon demand of  
8 Secured Party, shall assemble the Collateral and make it available to Secured Party  
9 at a place reasonably convenient to both parties. Debtor is entitled to any surplus  
10 and shall be liable to Secured Party for any deficiency.

11 (see Exhibit "B").

12 11. Pursuant to Section 7 of the Security Agreement, Plaintiffs were granted by Defendant a  
13 first and prior lien to secure the payment of the Note. (see Exhibit "B").

14 12. From the date of its execution to present date and despite repeated demands by Plaintiffs  
15 for payment, the Defendant has made no payment of principal or interest on the Note to  
16 Plaintiffs.

17 13. From the date of its execution to present date, the Defendant has not fully complied with  
18 the terms of the Security Agreement.

19 14. The Plaintiffs have performed all necessary conditions precedent to the commencement of  
20 the instant action.

21 COUNT I: BREACH OF PROMISSORY NOTE

22 15. Come now the Plaintiffs and reallege and reaffirm all allegations contained in paragraphs  
23 one (1) through fourteen (14) above as if fully set forth herein.

24 16. Under the terms of the Note, the Defendant was to have paid \$85,000.00 to Plaintiffs on or  
25 before June 14, 2009, which said Defendant has failed, refused and neglected to do despite  
repeated requests by Plaintiffs.

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1 17. As a proximate consequence of the aforesaid default, Plaintiffs exercise their option to  
2 bring this action for judgment against the Defendant and for the collection of the entire  
3 amount due Plaintiffs.

4 18. Under the terms of the Note, Plaintiffs are entitled to recover reasonable attorney's fees,  
5 costs and expenses of the suit and other costs arising out of the instant proceeding.

6 19. As a proximate consequence of Defendant's default on the Note, Plaintiffs have sustained  
7 direct and consequential damages all to their great damage and have found it necessary to  
8 retain the services of Terance P. Perry, Esq. of Datsopoulos, MacDonald & Lind, P.C. to  
9 prosecute this matter,  
10

11 WHEREFORE, Plaintiffs, James C. Murray and Allison B. Murray, demand judgment against  
12 Defendant, Howard C. Brand, for:

13 a. Damages;

14 b. Interest;

15 c. Costs;

16 d. Expenses;

17 e. Attorney's fees; and

18 f. For such other and further relief as this Honorable Court deems meet and just.  
19

20 COUNT II: REQUEST FOR DECLARATORY RELIEF  
21 §27-2-101, M.C.A.

22 20. Come now the Plaintiffs and reallege and reaffirm all allegations contained in paragraphs  
23 one (1) through nineteen (19) above as if fully set forth herein.

24 21. Plaintiffs have requested payment of the Note and enforcement of the Security Agreement  
25 securing the Note, yet Defendant has failed to make any payment and has failed to comply  
fully with the terms of the Security Agreement.

1 22. As a direct result of the breach of the Note and defaults under the terms of the Security  
2 Agreement, Plaintiffs have been damaged.

3 23. As a result of Plaintiffs' efforts to resolve this issue with Defendant, Plaintiffs have  
4 suffered damages in the form of costs associated with this action, including or in addition to  
5 reasonable attorney's fees,  
6

7 24. Pursuant to the terms of the Note, Plaintiffs are entitled to collect the expenses of collection  
8 and all costs and expenses of the suit, including reasonable attorney's fees.

9 25. Pursuant to §27-8-101, M.C.A., et. seq., Plaintiffs request that this Honorable Court declare  
10 that Defendant has breached the Note and that Plaintiffs are entitled to sell any and all  
11 collateral described in the Security Agreement in a commercially reasonable fashion to  
12 satisfy the outstanding indebtedness owed to Plaintiffs.  
13

14 26. Without an award of attorney's fees in this case, Plaintiffs would not be made whole.

15 27. In addition to a declaratory ruling, Plaintiffs are entitled to further relief, including or in  
16 addition to reasonable attorney's fees pursuant to: (a) the equitable power of this Court to  
17 make Plaintiffs whole as set forth in §27-8-313, M.C.A. and (b) the mandate that the  
18 Uniform Declaratory Judgment Act be liberally construed as set forth in §27-8-102, M.C.A.  
19

20 WHEREFORE, Plaintiffs, James C. Murray and Allison B. Murray, request the following relief:

- 21 a. A declaration that Defendant has breached the Note;
- 22 b. A declaration that Plaintiffs are entitled to sell any and all collateral described in the  
23 Security Agreement in a commercially reasonable fashion to satisfy the outstanding  
24 indebtedness owed to Plaintiffs;
- 25 c. An award of attorney's fees; and
- d. For such other and further relief as this Honorable Court deems meet and just.

JURY DEMAND

The Plaintiffs, James C. Murray and Allison B. Murray, demand a trial by jury on all issues to triable.

DATED this 22<sup>nd</sup> day of December, 2009.

DATSOPOULOS, MacDONALD & LIND, P.C.  
Attorneys for Plaintiffs

By:   
Terance P. Perry, Esq.

Quentin M. Rhoades  
State Bar No. 3969  
SULLIVAN, TABARACCI & RHOADES, P.C.  
1821 South Avenue West, Third Floor  
Missoula, Montana 59801  
Telephone: (406) 721-9700  
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qmr@montanalawyer.com

*Pro Defendente*

MONTANA TWENTY FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

**ALLISON B. MURRAY AND  
JAMES C. MURRY,**

Plaintiffs,

vs.

**HOWARD C. BRAND, JR.,**

Defendant.

Dept. No. 1  
Cause No. DV-09-691

***MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION***

***MOTION***

Defendant Howard C. Brand, Jr. hereby requests, pursuant to Mont. Code Ann. §§ 27-19-314 through 27-19-318, that the Court enter a temporary restraining order ("TRO") and preliminary injunction immediately enjoining Plaintiffs and each of them, their agents,



representatives and employees, from initiating any proceeding or otherwise causing the sale, transfer, or disposal of the Collateral subject to the Security Agreement between the parties dated March 16, 2009.

Defendant also requests that the Court issue an Order requiring Plaintiffs to appear and show cause why a preliminary injunction should not be granted.

In support of this application, Defendant submits the following brief.

***BRIEF***

**ISSUE**

Plaintiff will suffer immediate and irreparable injury, loss or damage before Defendants can be heard in opposition because Defendants have given notice of intent dispose of personal property owned by Plaintiff, which is not reasonably replaceable, on December 26, 2009.

**STATEMENT OF FACTS**

All of the facts set forth below are drawn from and substantiated by the Declaration of Defendant Howard C. Brand, Jr. which is attached to this brief as Exhibit 1.

1. Plaintiff Howard C. Brand, Jr. (hereinafter "Plaintiff") is an

individual citizen of in Ketchikan Borough, Alaska.

2. Defendants Allison B. Murray and James C. Murray (hereinafter "Defendants") are individuals and citizens of Ravalli County, Montana.

5. On or about March 16, 2009, Plaintiff executed a Promissory Note (hereafter "Note") in the amount of Eighty-Five Thousand and 00/100 Dollars (\$85,000.00) naming Defendants as payee.

6. On or about the time the Note was signed, Defendants provided to Plaintiff, an amount of Seventy Thousand and 00/100 Dollars (\$70,000.00).

7. The Note included a provision that in the event a suit is brought to collect on the Note, Plaintiff would be liable to pay the expenses of collection and all costs and expenses of the suit, including reasonable attorney fees.

8. The Note provided a nominal interest rate of thirteen percent (13%) per annum, compounded monthly, for all "past due" sums.

9. The obligations set forth in the Note were secured by a Security Agreement (hereafter "Agreement").

10. Pursuant to the Agreement, Plaintiff granted to Defendants a

security interest in certain collateral comprised of personal property rightfully belonging to Plaintiff.

11. The personal property named as collateral by the Agreement included eight motor vehicles (hereafter "the Collateral") belonging to Plaintiff, many of them valuable classics.

12. At the time the Note was signed, the Collateral was located in the barn at Plaintiff's property at 270 Wilcox Lane, Corvallis, Montana, 59828.

13. On or around September or October of 2009, Plaintiff received a verbal request for repayment on the Note in the amount of \$85,000.00.

14. On or around October or November of 2009, Plaintiff discovered that Defendants had entered the barn located at Plaintiff's property, without permission, and removed the Collateral.

15. Shortly thereafter, Plaintiff was advised that Defendants had transferred title of the Collateral to Defendants' names without the knowledge or consent of Plaintiff.

16. On or around November 25, 2009, Defendants demanded that Plaintiff received correspondence from an attorney on behalf of Defendants

demanding payment in the amount of One Hundred, Twenty-Five Thousand and 00/100 dollars (\$125,000.00) for payment – in full – on the Note. Since that time, Defendants have demanded *per diem* interest of Forty-Four Dollars and 52/1000 Cents (\$44.52).

17. On or around December 15, 2009, Defendants provided to Plaintiff, a Notification of Plan to Sell Property, advising Plaintiff that the Collateral was to be sold at a private sale sometime on or after **December 26, 2009** (See "Notification" attached hereto as Exhibit 3).

18. As of the date of the date of this Motion, Plaintiff is in the process of securing funds sufficient to make payment on the demand made by Defendants.

19. If the sale of the Collateral is not enjoined, Plaintiff will suffer irreparable injury or damage because the many of the motor vehicles at issue are rare antiques which cannot be readily replaced. Moreover, some of them have sentimental value which can never be replaced. In addition, the collection itself took Plaintiff years to amass. It is highly unlikely that Plaintiff, who is now 81 years old, he will have a second opportunity to create such a collection.

## DISCUSSION

### **1. Plaintiff's request for Injunctive relief is warranted under Mont. Code Ann. § 27-19-201.**

Pursuant to Mont. Code Ann. § 27-19-201, Plaintiffs should be enjoined from initiating any proceeding or otherwise causing the sale, transfer, or disposal of the Collateral subject to the Security Agreement between the parties dated March 16, 2009. A preliminary injunction is properly granted:

- (1) When it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
- (2) When it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;
- (3) When it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;
- (4) When it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) When it appears that the applicant has applied for an order under the provisions of 40-4-121 or an order of protection under Title 40, Chapter 15. Mont. Code Ann. § 27-19-201.

In interpreting Mont. Code Ann. § 27-19-201, the Montana Supreme Court has held, "The subsections are disjunctive, meaning that findings that satisfy one subsection are sufficient. All five subsections need not be satisfied for an injunction to issue." *Stark v. Borner* (1987) 226 Mont. 356, 359-360, 735 P.2d 314, 317. Thus, a preliminary injunction may be issued if even one subsection of § 27-19-201 can be satisfied. *Sweet Grass Farms, Ltd. v. Board of County Com'rs of Sweet Grass County*, 2000 MT 147, ¶ 27, 300 Mont. 66, 2 P.3d 825.

Under the facts of this case, Defendant satisfies subsections (2), (3), and (4) of Section 27-19-201.

First, Defendant satisfies Mont. Code Ann. § 27-19-201(2) because he will suffer irreparable injury if Plaintiff is allowed to sell, transfer, or disposal of the Collateral. As stated above, the Collateral in this matter includes rare antiques vehicles, collected by Plaintiff over many years of his life, which cannot be readily replaced. This satisfies the criteria of Mont. Code Ann. § 27-19-201(2).

Second, Defendant satisfies Mont. Code Ann. § 27-19-201(3) because during the litigation Plaintiff intends to sell the Collateral in violation of Defendant's rights, which, if accomplished, will render any judgment ineffectual. Prior to filing their Complaint in this matter, Plaintiffs advised Defendants of an Intent to sell on or sometime after December 26, 2009. Should such a sale occur, any judgment in this matter would be ineffectual.

Third, Defendant satisfies Mont. Code Ann. § 27-19-201(4) because the Plaintiffs have threatened to or are about to dispose of Defendant's property with intent to defraud Defendant.

**2. Defendant's request for a TRO is warranted under Mont. Code Ann. § 27-19-314 through 316.**

Montana law authorizes the court to temporarily restrain Plaintiffs prior to the show cause hearing on the injunction request. Mont. Code Ann. § 27-19-314. Such a TRO may be issued without notice to the adverse party only if it clearly appears that delay would cause immediate and irreparable injury before the adverse party could be heard in opposition, and the applicant certifies to the court the efforts that have

been made to notify the adverse party. Mont. Code Ann. § 27-19-315.

In this case, Defendant has been advised of Plaintiffs Intent to sell the Collateral on or shortly after December 26, 2009. The declaration of Defendant demonstrates that further delay will cause immediate and Irreparable injury to Defendant. This satisfies the first requirement for a TRO to be issued without notice.

At or around 7:30 p.m. on December 23, 2009, counsel for Defendant first received notification that Plaintiffs had filed a complaint in this matter. Leading up to Plaintiffs' Complaint, counsel for Defendant had been diligently working to resolve this matter without the necessity of litigation. Counsel for Defendant has made several attempts to request some guidance from either counsel for Plaintiff and former counsel for Plaintiff, but due to the holidays, no one has been available. (See Exhibit 2, attached.) As of the filing of this application no response has been received from Plaintiffs nor their counsel.

This satisfies the second requirement for issuance of a TRO without notice to the adverse party.



### CONCLUSION

A TRO and preliminary injunction should be issued against Plaintiffs as set forth above. A proposed order is submitted with this application and brief.

DATED this 24<sup>th</sup> day of December, 2009.

SULLIVAN, TABARACCI & RHOADES, P.C.

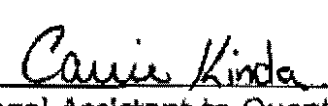
By: 

Quentin M. Rhoades  
*Pro Defendente*

### CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of December, 2009, I served upon the following a true and correct copy of the foregoing by depositing said copy in the U.S. mail, postage prepaid, and addressed as follows:

Terance P. Perry, Esq.  
DML  
201 West Main Street, Ste. 201  
Missoula, Montana 59802

  
Legal Assistant to Quentin M. Rhoades

**DECLARATION OF HOWARD BRAND**

1. I, Howard C. Brand, Jr., am an individual citizen of Ketchikan Borough, Alaska.
2. Defendants Allison B. Murray and James C. Murray (hereinafter "Defendants") are individuals and citizens of Ravalli County, Montana.
3. On or about March 16, 2009, I executed a Promissory Note (hereafter "Note") in the amount of Eighty-Five Thousand and 00/100 Dollars (\$85,000.00) naming Defendants as payee.
4. On or about the time the Note was signed, Defendants provided to me an amount of Seventy Thousand and 00/100 Dollars (\$70,000.00).
5. The Note included a provision that in the event a suit is brought to collect on the Note, I would be liable to pay the expenses of collection and all costs and expenses of the suit, including reasonable attorney fees.
6. The Note provided nominal interest rate of thirteen percent (13%) per annum, compounded monthly, for all "past due" sums.
7. The obligations set forth in the Note were secured by a Security Agreement (hereafter "Agreement").
8. Pursuant to the Agreement, I granted to Defendants a security interest in certain collateral comprised of personal property rightfully belonging to me.
9. The personal property named as collateral by the Agreement includes seven motor vehicles (hereafter "the Collateral") belonging to me, many of them valuable classics.
10. The Collateral has an estimated combined value of approximately Two Hundred Twenty Five Thousand Five Hundred and 00/100 Dollars (\$225,500.00) broken down as follows:



12/23/2009

20:43

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Make	Year - Model	Estimated Value
Jaguar	1968 - XKE Coup	\$30,000.00
Cadillac	2008 - Deville	\$22,500.00
Ferrari	1962 - Coup	\$125,000.00
Jaguar	1997 - XK8	\$10,000.00
Chevy	2000 - Pickup	\$5,000.00
Chevy	2002 - Pickup	\$8,000.00
Ford	1936 - Phaeton	\$25,000.00
<b>TOTAL:</b>		<b>\$225,500.00</b>

11. At the time the Note was signed, the Collateral was located in the barn at my property at 270 Wilcox Lane, Corvallis, Montana, 59828.

12. On or around September or October of 2009, I received a verbal request for repayment on the Note in the amount of \$85,000.00.

13. On or around October or November of 2009, I discovered that Defendants had entered the barn located at my property, without permission, and removed the Collateral.

14. Shortly thereafter, I was advised that Defendants had transferred title of the Collateral to Defendants' names without my knowledge or consent.

15. On or around November 25, 2009, Defendants demanded that I receive correspondence from an attorney on behalf of Defendants demanding payment in the amount of One Hundred, Twenty-Five Thousand and 00/100 dollars (\$125,000.00) for payment -- in full -- on the Note.

16. Since that time, Defendants have demanded *per diem* interest of Forty-Four Dollars and 52/1000 Cents (\$44.52).

12/23/2009

28:43

SULLIVAN: TAB A11Y + 12534141179

140.417

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17. As of the date of the Complaint, I am in the process of securing funds sufficient to make payment on the demand made by Defendants.

18. On or around December 15, 2009, Defendants provided to me, a Notification of Plan to Sell Property, advising me that the Collateral was to be sold at a private sale sometime on or after **December 26, 2009**.

19. If the threatened sale of the Collateral is not enjoined, I will suffer irreparable injury or damage because many of the motor vehicles at issue are rare antiques which cannot be readily replaced. Moreover, some of them have sentimental value which can never be replaced. In addition, the collection itself took me years to amass. It is highly unlikely that I, who am now 81 years old, will have a second opportunity to create such a collection.

I, Howard C. Brand, Jr., declare under penalty of perjury that the foregoing is true and correct.

Executed this 23<sup>rd</sup> day of December, 2009 by:



Howard C. Brand, Jr.

**Quentin Rhoades**

---

**From:** Quentin Rhoades  
**Sent:** Thursday, December 24, 2009 11:48 AM  
**To:** 'Howard Recht'  
**Cc:** Chris Fagan; 'perry@dmllaw.com'; 'CPilgrim@dmllaw.com'; 'dlind@dmllaw.com'  
**Subject:** FW: Mr. Brand  
**Importance:** High  
Hi Mr. Recht,

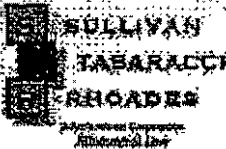
Mr. Terrance Perry, Esq., filed a lawsuit against our client on Wednesday, faxed it to us last night at close of business, and then immediately absconded the jurisdiction. We attempted to contact him, to no avail. I am certain he is receiving emails, even if he is not responded to them.

Second, regardless of his interesting tactics, we of course happily direct all future correspondence in this matter to Mr. Perry if he decides to return to his office. In light of the threat issued by you on behalf of the Murrys to dispose of the collateral on December 26, 2009, however, we have no choice but to solicit you for an answer as to whether the vehicles will be sold before we get an opportunity to talk to Mr. Perry about this matter or receive some guidance from the court. A simple yes they will sell the vehicles before next week, or no they will not, will suffice. Should you fail to give us an immediate answer, we will have no choice but to file this afternoon for a TRO.

Please advise.

Happy Holidays!

Quentin M. Rhoades



V:406.721.9700

[www.montanalawyer.com](http://www.montanalawyer.com) <<<http://www.montanalawyer.com/>>>

NOTICE : This confidential communication is protected by the U.S. Privacy in Communications Act, 18 U.S.C. Sec 2510 et. seq.

---

**From:** Chris Fagan  
**Sent:** Thursday, December 24, 2009 11:18  
**To:** Quentin Rhoades  
**Subject:** FW: Mr. Brand

See below. Should I follow up with an email. He obviously won't return our calls.

**Chris Fagan**

Sullivan, Tabaracci & Rhoades, P.C.  
1821 South Avenue West  
Third Floor  
Missoula, MT 59801



12/24/2009

Phone: 406-721-9700

Fax: 406-721-5838

fagan@montanalawyer.com

www.montanalawyer.com

*CONFIDENTIALITY NOTICE: The contents of this communication are confidential and subject to attorney/client privilege. If the reader is not the intended recipient or its agent, be advised that any dissemination, distribution or copying of the contents of this communication is prohibited. If you have received this communication in error, please notify the sender immediately and destroy all copies (electronic or otherwise) of this communication, which you have received*

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**From:** Howard Recht [mailto:howard@rechtfirm.com]

**Sent:** Thursday, December 24, 2009 11:12 AM

**To:** Chris Fagan

**Cc:** Al & Jim Murray

**Subject:** Mr. Brand

Please direct all further inquiries into this matter to Terance Perry (728-0810). He will handle this matter from this time forth.

Howard F. Recht

12/24/2009

NOTIFICATION OF PLAN TO SELL PROPERTY

Howard C. Brand, Jr.  
285 Wilcox Lane  
Corvallis, MT 59828



Subject: Promissory Note to James C. Murray and Allison B. Murray dated March 16, 2009, Security Agreement of the same date, and Subsequent Agreements.

James C. and Allison B. Murray have the collateral described in Exhibit A attached hereto, and are in possession of the collateral because you are in breach.

James C. and Allison B. Murray will sell the collateral at private sale sometime after December 26, 2009. The proceeds derived from the sale (after paying costs) will reduce the amount you owe. If they get less money than you owe, you will owe the difference. If they get more money than you owe, you will get the extra money, unless they must pay it to someone else.

You can get the collateral back at any time before sale by paying them the full amount you owe (not just the past-due payments), including their expenses. To learn the exact amount you must pay, call their legal counsel at 406-363-1040.

If you want them to explain to you in writing how they have figured the amount that you owe, you may call their legal counsel at 406-363-1040 or write to their legal counsel and request a written explanation.

If you need more information about the sale call their legal counsel at 406-363-1040 or write to their legal counsel at:

Recht & Recht, P.C.  
P.O. Box 727  
Hamilton, MT 59840

This notice is being addressed to the following other people who have an interest in the collateral or who owe money under your agreement:

None.

Dated this 15<sup>th</sup> day of December, 2009.

Recht & Recht, P.C.

Howard F. Recht



## EXHIBIT A

Make	Model	Year	VIN
Jaguar	XKE Coup	1968	1E35410
Cadillac	Deville	2008	1G6KD57Y48U140470
Ferrari	Coup	1962	250GTE2969
Jaguar		1997	SAJGX2747VC007372
Chevy	Pickup	2000	1GCEC14V8YB260119
Chevy	Pickup	2002	1GCEK19V42B261917
Ford		1936	865398



Recht & Recht, PC  
P.O. Box 727  
Hamilton, MT 59840

Howard C. Brand Jr.  
270 Wilcox Ln.  
Corvallis, MT 59828

Hon. Jeffrey H. Langton  
District Court Judge  
Montana 21st Judicial District  
205 Bedford Street, Ste A  
Hamilton, Montana 59840  
(406) 375-6784

MONTANA TWENTY FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

**ALLISON B. MURRAY AND  
JAMES C. MURRY,**

Plaintiffs,

vs.

**HOWARD C. BRAND, JR.,**

Defendant.

Dept. No. **1**  
Cause No. **DV-09-691**

***TEMPORARY RESTRAINING  
ORDER AND  
ORDER TO SHOW CAUSE***

Upon Defendant's Application for TRO and Injunction, the Court finds that a TRO should be issued without notice to Plaintiffs Allison B. and James C. Murray under MONT. CODE ANN. §§ 27-19-314–316. There is risk of immediate and irreparable injury to Defendant. Accordingly it IS

HEREBY ORDERED:

1. The application for TRO is GRANTED. As of December \_\_\_\_, 2009, at \_\_\_\_ o'clock \_\_.m., Plaintiffs are, pending further hearing, enjoined from initiating any proceeding or otherwise causing the sale, transfer, or disposal of the Collateral that is the subject of the Security Agreement between the parties dated March 16, 2009;
2. This Order shall be immediately filed in the clerk's office and entered in the record; and
3. The parties shall appear before this Court on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_. m., Missoula County Courthouse, Courtroom No. \_\_\_\_, then and there to show cause why Defendant's Application for Preliminary Injunction should not be granted.

SO ORDERED this \_\_\_\_ day of December, 2009.

---

Hon. Jeffrey H. Langton  
District Court Judge

CC: Counsel Rhoades  
Counsel Perry December 24, 2009

1 Terance P. Perry, Esq.  
2 Phil McCreedy, Esq.  
3 DATSOPOULOS, MacDONALD & LIND, P.C.  
201 West Main Street, Suite 201  
4 Missoula, Montana 59802  
Phone: (406) 728-0810  
5 Fax: (406) 543-0134

6 Attorneys for Plaintiffs

DEC 29 2009

Sullivan & Kneass

8  
9 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

10 JAMES C. MURRAY and ALLISON B.  
MURRAY, husband and wife;

11 Plaintiffs,

12 vs.

13 HOWARD C. BRAND, JR.;

14 Defendant.

Cause No. DV-09-691  
Dept. No. 1

15 NOTICE OF APPEARANCE

16 To the Clerk of the Ravalli County District Court:

17 NOTICE IS HEREBY GIVEN that the undersigned, Phil McCreedy, of the firm of  
18 Datsopoulos, MacDonald & Lind, P.C., has also been retained to represent the above-named  
19 Plaintiffs, James C. Murray and Allison B. Murray, in the above matter and hereby request that  
20 he be entered as an attorney of record along with Terance P. Perry.

21 DATED this 28<sup>th</sup> day of December, 2009.

22  
23 DATSOPOULOS, MacDONALD & LIND, P.C.  
Attorneys for Plaintiffs

24  
25 By: 

Phil McCreedy, Esq.

CERTIFICATE OF SERVICE

The undersigned, an employee of Datsopoulos, MacDonald & Lind, P.C., hereby certifies that a true and correct copy of the foregoing was served via facsimile and First Class U.S. Mail, postage prepaid, this 28 day of December, 2009, to:

Quentin M. Rhoades, Esq.  
Christopher V. Fagan, Esq.  
Sullivan, Tabaracci & Rhoades, P.C.  
1821 South Avenue West, Third Floor  
Missoula, Montana 59801  
Fax: (406) 721-5838  
*Counsel for Defendant*

By: \_\_\_\_\_

  
Celia Pilgrim, Paralegal to  
Phil McCreedy, Esq.

1 **Terance P. Perry, Esq.**  
2 **Phil McCreedy, Esq.**  
3 **DATSOPOULOS, MacDONALD & LIND, P.C.**  
4 201 West Main Street, Suite 201  
5 Missoula, Montana 59802  
6 Phone: (406) 728-0810  
7 Fax: (406) 543-0134

8 Attorneys for Plaintiffs

DEC 29 2009

Sullivan, K. Reed  
& P. A. 2009

9 **MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY**

10 **JAMES C. MURRAY and ALLISON B.**  
11 **MURRAY, husband and wife;**

12 Plaintiffs,

13 vs.

14 **HOWARD C. BRAND, JR.;**

15 Defendant.

Cause No. DV-09-691  
Dept. No. 1

**PLAINTIFFS' RESPONSE IN LIMITED  
OPPOSITION TO MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

16 COME NOW the Plaintiffs, James C. Murray and Allison B. Murray, by and through their  
17 counsel of record, Datsopoulos, MacDonald & Lind, P.C., and respond to Defendant's Motion  
18 for Temporary Restraining Order and Preliminary Injunction.

19 In light of the relief sought in the Complaint filed on December 23, 2009, neither a  
20 temporary restraining order nor a preliminary injunction is necessary or warranted in this case. In  
21 addition to damages for breach of promise, the Plaintiffs' seek a declaration that they are entitled  
22 to sell the collateral if payment is not made in full on the Note, including accrued interest, costs,  
23 and attorney's fees. By requesting this relief it should be clear that Plaintiffs do not intend to sell  
24 the collateral prior to the Court's ruling on the requested declaration. Accordingly, none of the  
25 provisions of §27-19-201, M.C.A., cited by the Defendant as a basis for a preliminary injunction  
are applicable.

1        §27-19-201(2), M.C.A. - dealing with irreparable harm from the commission of some act  
 2 during the pendency of litigation - does not apply because the Plaintiffs are clearly seeking a  
 3 declaration of their right to sell the collateral if payment is not made. Because any sale will occur  
 4 after the Court's declaration - there is no "act during the litigation" that would produce a great or  
 5 irreparable injury. §27-19-201(3), M.C.A., does not apply because the Plaintiffs are not "doing  
 6 or threaten[ing] ...some act in violation of the applicant's rights." Rather, they are seeking a  
 7 declaration of those rights before they act. §27-19-201(4), M.C.A. - dealing with fraudulent  
 8 intent - does not apply for the simple reason that Plaintiffs are seeking court-ordered relief. As a  
 9 consequence, there is no evidence to support the Defendant's claim that Plaintiffs are attempting  
 10 to dispose of property "with intent to defraud the applicant...."

11  
 12  
 13        For the reasons set forth above, and because imposition of a temporary restraining order  
 14 and cause hearing will only add to the cost of this litigation, Plaintiffs ask that the Defendants  
 15 motion be denied.

16        DATED this 28<sup>th</sup> day of December, 2009.

17  
 18        DATSOPOULOS, MacDONALD & LIND, P.C.  
 19        Attorneys for Plaintiffs


20        By: 

21        Phil McCreedy, Esq.  
 22  
 23  
 24  
 25

CERTIFICATE OF SERVICE

The undersigned, an employee of Datsopoulos, MacDonald & Lind, P.C., hereby certifies that a true and correct copy of the foregoing was served via facsimile and First Class U.S. Mail, postage prepaid, this 28<sup>th</sup> day of December, 2009, to:

Quentin M. Rhoades, Esq.  
Christopher V. Fagan, Esq.  
Sullivan, Taberacci & Rhoades, P.C.  
1821 South Avenue West, Third Floor  
Missoula, Montana 59801  
Fax: (406) 721-5838  
*Counsel for Defendant*

By:   
Celia Pilgrim, Paralegal to  
Phil McCreedy, Esq.



JS-44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

JAMES C. MURRAY and ALLISON B. MURRAY, husband and wife

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

RAVALLI COUNTY, MONTANA

(c) Attorney's (Firm Name, Address, and Telephone Number)

## DEFENDANTS

HOWARD C. BRAND, JR.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

KETCHIKAN BOROUGHS, ALASKA

Attorneys (If Known)

Quentin M. Rhoades &amp; Christopher V. Fagan, Sullivan, Tabaracci &amp; Rhoades, P.C., 1821 South Avenue West, 2nd Floor, Anchorage, Alaska

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ U.S. Government Plaintiff ☐ Federal Question (U.S. Government Not a Party)
- ☐ U.S. Government Defendant ☒ Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- PTF DEF PTF DEF
- Citizen of This State ☒ ☐ Incorporated or Principal Place of Business in This State ☐ ☐
- Citizen of Another State ☐ ☒ Incorporated and Principal Place of Business in Another State ☐ ☐
- Citizen or Subject of a Foreign Country ☐ ☐ Foreign Nation ☐ ☐

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Mexican Act <input type="checkbox"/> 152 Recovery of Definitive Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Deception/Safety/Hazards <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>LABOR/EMPLOYMENT</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 460 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 530 Securities/Commodities Exchange <input type="checkbox"/> 873 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

On the U.S. Constitution under which you are filing (Do not cite jurisdictional statutes unless diversity):

PROMISSORY NOTE

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$85,000.00 (+)

CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/05/2010

SIGNATURE OF ATTORNEY OF RECORD

Quentin M. Rhoades, Esq.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING OFF

JUDGE

MAG JUDGE